

FILED

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SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

DAVID L. ANDERSON (CABN 149604)
United States Attorney

HALLIE HOFFMAN (CABN 210020)
Chief, Criminal Division

THOMAS R. GREEN (CABN 203480)
Assistant United States Attorney

1301 Clay Street, Suite 340S
Oakland, California 94612
Telephone: (510) 637-3680
FAX: (510) 637-3724
thomas.green@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 4-20-70963 MAG
)	
Plaintiff,)	
)	STIPULATION AND [PROPOSED] ORDER
v.)	SETTING MATTER FOR STATUS
)	REGARDING PRELIMINARY HEARING OR
MARNIQUE SIMON,)	ARRAIGNMENT AND EXCLUDING TIME
)	UNTIL MAY 10, 2021
Defendant.)	
)	
)	
)	

Plaintiff United States of America, by and through its counsel of record, the United States Attorney for the Northern District of California and Assistant United States Attorney Thomas R. Green, and defendant Marnique Simon (Simon or defendant), by and through his counsel of record, Assistant Federal Public Defender Graham Archer, hereby stipulate as follows:

1. On July 16, 2020, the Honorable Donna M. Ryu signed a federal criminal complaint charging defendant with being a felon in possession of ammunition in violation of 18 U.S.C. § 922(g)(1). On September 30, 2020, defendant made his initial appearance and was advised of the charge on the criminal complaint. On October 8, 2020, a detention hearing was held, and the Honorable Nathanael M. Cousins issued an order detaining defendant.

1 2. The parties appeared for status conferences regarding preliminary hearing or arraignment
2 on March 29 and April 19, 2021. At the appearances the parties requested that this matter be set for a
3 future status conference regarding preliminary hearing or arraignment, most recently set for May 10,
4 2021, and agreed to exclude time for purposes of calculations under the Speedy Trial Act and Rule 5.1
5 of the Rules of Criminal Procedure. The court set the next appearance for May 10, 2021, and ordered on
6 the record that time should be excluded as requested. The parties now submit this stipulation to
7 document their agreements and the exclusions of time ordered on the record.

8 3. The government has produced discovery relating to defendant's arrest and criminal
9 history to the defendant this week. The discovery produced includes the production of recordings made
10 around the time of defendant's arrest. The government and defendant are also exploring the potential
11 for a pre-indictment disposition. Counsel for defendant requires additional time to review discovery and
12 discuss and advise the defendant regarding the evidence, including as to the merits of a potential
13 disposition or proceeding to trial. Counsel for the defendant has also sought additional discovery from
14 the government and is in the process of conducting his own investigation that may result in discovery
15 being produced by the defendant to the government, or additional discovery requests by the defendant.

16 4. The present rules governing visits to Santa Rita Jail and the need for the defense to
17 schedule meetings or telephone or videoconference calls with defendant further support the requested
18 continuance. Thus, with the consent of defendant, counsel for defendant represents that additional time
19 is necessary to review the discovery in this action, confer with defendant, conduct and complete an
20 independent investigation of the case, and prepare for trial in the event that a pre-indictment resolution
21 does not occur.

22 5. Defense counsel represents that defendant understands that he has a right under 18 U.S.C.
23 § 3161(b) to be charged by information or indictment with the offense alleged in the pending criminal
24 complaint and that defendant knowingly and voluntarily waives the time to be charged by indictment or
25 information from Speedy Trial Act calculations until May 10, 2021. Defense counsel further represents
26 that his client knowingly and voluntarily waives the timing for a preliminary hearing under Federal Rule
27 of Criminal Procedure 5.1 until the requested status hearing date of May 10, 2021.
28

6. For purposes of computing the date under Rule 5.1 of the Federal Rules of Criminal Procedure for preliminary hearing, and the date under the Speedy Trial Act by which defendants must be charged by indictment or information, the parties agree that the time period of March 29, 2021, to May 10, 2021, inclusive, should be excluded pursuant to 18 U.S.C. §§ 3161(b), (h)(7)(A), (h)(7)(B)(i) and (h)(7)(B)(iv) because the delay results from a continuance granted by the Court at defendants' request, without government objection, on the basis of the Court's finding that: (i) the ends of justice served by the continuance outweigh the best interest of the public and defendants in the filing of an information or indictment within the period specified in 18 U.S.C. § 3161(b); and (ii) failure to grant the continuance would unreasonably deny defense counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence

7. Nothing in this stipulation shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods be excluded from the period within which an information or indictment must be filed.

8. Based on his communications with the defendant, defense counsel represents that defendant desires to set this matter for a status regarding preliminary hearing or arraignment on May 10, 2021, and agrees to the stipulations expressed in this filing, for all of the reasons described in this stipulation. The undersigned Assistant United States Attorney certifies that he has obtained approval from counsel for the defendant to file this stipulation and proposed order.

IT IS SO STIPULATED.

DATED: April 21, 2021

Respectfully Submitted,

DAVID L. ANDERSON
United States Attorney

/s/ Thomas R. Green
THOMAS R. GREEN
Assistant United States Attorney

/s/ Graham Archer
GRAHAM ARCHER
Attorney for Marnique Simon

[PROPOSED] ORDER

The Court has read and considered the Stipulation Regarding Request for (1) setting this matter for a status hearing and (2) an exclusion of time under the Speedy Trial Act and Rule of Criminal Procedure 5.1, filed by the parties in this matter. The Court hereby finds that the Stipulation, which this Court incorporates by reference into this Order, demonstrates good cause for a finding of excludable time pursuant to the Speedy Trial Act, 18 U.S.C. § 3161, as well as to waive the timing for preliminary hearing under Rule 5.1 of the Federal Rules of Criminal Procedure.

The Court further finds that: (i) the ends of justice served by the continuance outweigh the best interest of the public and defendants in the filing of an information or indictment within the time period set forth in 18 U.S.C. § 3161(b); and (ii) failure to grant the continuance would unreasonably deny defense counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

THEREFORE, FOR GOOD CAUSE SHOWN:

The Court sets this matter for a status regarding preliminary hearing or arraignment on ^{May}~~January~~ 10, 2021. The time period of March 29, 2021, to May 10, 2021, inclusive, is excluded in computing the time within which an information or indictment must be filed under 18 U.S.C. § 3161(b), and the time by which any trial must commence pursuant to the provisions of 18 U.S.C. §§ 3161(h)(7)(A), (h)(7)(B)(i), and (B)(iv). The Court also finds that defendant waives the timing by which a preliminary hearing must be held pursuant to Rule 5.1 of the Federal Rules of Criminal Procedure for the time period of March 29, 2021 through May 10, 2021. Nothing in this Order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excluded from the period within which an information or indictment must be filed.

IT IS SO ORDERED.

April 21, 2021

DATE



HONORABLE ROBERT M. ILLMAN
UNITED STATES MAGISTRATE JUDGE